Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**WT Docket No. 99-217**
Promotion of Competitive Networks	)	
In Local Telecommunications Markets	)	
Wireless Communications Association	)	
International, Inc. Petition For Rulemaking to	)	
Amend Section 1.4000 of the Commission's	)	
Rules to Preempt Restrictions on Subscriber	)	
Premises Reception or Transmission Antennas	)	
Designed to provide fixed Wireless Services	)	
Cellular Telecommunications Industry	)	
Association Petition for Rulemaking and	)	
Amendment of the Commission's Rules	)	
To Preempt State and Local Imposition of)		
Discriminatory And/Or Excessive Taxes	)	
And Assessments	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act)		
of 1996	)	

To: The Commission

COMMENTS OF TRITON PCS HOLDINGS, INC.

Triton PCS Holdings, Inc. ("Triton"), by its attorneys, hereby respectfully submits these comments in respons to the *Notice of Proposed Rulemaking and Notice of Inquiry* ("*NOI*") in the above-captioned proceeding. Triton supports the Commission's efforts to ensure that states and municipalities do not impose excessive, discriminatory ta and fees on telecommunications providers which will act as a barrier to entry to new communications markets. Personal Communications Service ("PCS") carriers such as Triton are subject to federal and state taxes and fees, as well as taxes in each municipality in which they operate. Taken together, this cumulative tax burden is exceedingly oppressive and often serves as a barrier to expanding service to new markets. In addition, many state and municipal

taxation schemes are based on fixed telecommunications services where determining the origination and termination locations of calls can be easily accomplished. However, for mobile services, determining the origination and termina locations, as well as all locations in between, and consequently which municipality is entitled to tax which revenue stream, is impossible. Moreover, wireless billing systems are not currently capable of accurately tracking each of the numerous municipal taxes so that the taxes can be passed directly to the subscriber.

Most importantly, the Commission must also be careful not to allow municipalities to disguise wireline franc fees, and other wireline charges for rights-of-way use, as "taxes" on wireless carriers. As discussed below, recent legislation passed in South Carolina effectively charges wireless carriers franchise fees even though wireless carriers not use municipal rights-of-way. Only by ensuring that telecommunications carriers are not subject to special taxes o to their provision of telecommunications services will competition in telecommunications markets flourish.

I. STATEMENT OF INTEREST

Triton operates PCS systems in rural and urban markets in the Southeast[1]. Because of the variety of locales i which it operates, Triton is subject to numerous state and municipal taxation schemes and regulations. Consequently Triton has an interest in ensuring that it is not subject to excessive, discriminatory taxation regulations.

II. DISCUSSION

Triton welcomes the FCC's attempts to prevent states and municipalities[2] from imposing oppressive financia burdens on carriers which serve as a barrier to new carrier entry into new telecommunications marketplaces in violat of Sections 253 and 332(c)(3) of the Telecommunications Act of 1934 ("the Act"). While municipalities have a righ collect reasonable taxes and fees for the services they provide, they may not abuse this right by overcharging or setti

[1]Specifically, Triton operates in Virginia, Georgia, North Carolina and South Carolina.

[2]The Commission's *NOI* seeks comment on the effects of both state and municipal taxation regulations. For simplicity, the Comments refer to "municipalities" as including all non-federal governmental entities.

up onerous compliance procedures. Because Triton operates in a variety of locales, it is subject to a wide range of municipal tax schemes. Much of the problem has to do with obtaining correct information from the municipalities s that Triton can comply with its tax liabilities. There are no cohesive procedures for a wireless carrier to follow or, as often the case, consistent interpretations of the applicable statutes. Triton urges the Commission to intervene to ensu that telecommunications carriers are not effectively barred from entering new markets due to these oppressive taxatio schemes and procedures.

A. Excessive State and Local Taxes Act as A Barrier to Entry for New Telecommunications Providers

1. The Multitude of Taxes Which Carriers Must Pay Act as a Barrier to Entry.

As the Commission astutely notes in the *NOI*, the Commission must balance the state tax savings provisi of Section 602[3] of the Act with the prohibitions against barriers to entry contained in Section 253[4]. The Commissio rightfully concluded that it has the authority to prevent discriminatory and anti-competitive taxation schemes which hinder competitors from entering new telecommunications markets. However, the Commission must examine not o the burdens of individual taxes but also, the cumulative effect of the multitude of state and municipal taxes which ca must pay. Municipalities often see telecommunications providers as "cash cows" from which they can exact signific tax revenues for municipal projects. Consequently, these governmental entities impose numerous types of taxes on providers to boost their ultimate tax revenue stream. While individually, the taxes may not seem onerous, combined they increase the costs to consumers to the point that the service becomes cost-prohibitive, thereby becoming a barri to entry to the wireless carrier.

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[3]Section 602 states: " . . .[n]othing in this Act or the amendments made by this Act shall be construed to modify, impair, or supercede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation . . ."

[4]Section 253(a) states "No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

Virginia, a state in which Triton is just beginning to operate, is an example of this multiple tax burden. C state level, Triton must pay a yearly Telecommunications Companies Minimum Tax (.5% of gross receipts), a month Wireless E-911 Surcharge ($.75 per month for each telephone number assigned by Triton), a gross receipts tax and a yearly Special Regulatory Revenue Tax (.2% of gross receipts). Once it begins its operations in Fredericksburg, VA, Triton may be responsible for also paying a monthly Mobile Local Telecommunications Service Utility Tax (10% of first $30 of monthly gross charge made to consumer phone customer) and a gross receipts tax. In Newport News, VA, Triton may be required to pay a monthly Utility Tax (22% per month), a monthly Emergency Telephone System Tax (10% of monthly customer bill), a gross receipts tax and a monthly Telephone Tax (20% of monthly bill to commercial users). Similarly, in Portsmouth, VA, Triton may be responsible for monthly Mobile Local Telecommunications Services Taxes (10% per month -$3.00 maximum) and Utility Service Taxes (20% on first $2,(charges per month) and E-911 Telephone System Tax ($2.00 per month per purchaser)[5].

Normally, carriers would pass these taxes along to consumers through line items on their telephone bills. However, the administrative burden associated with accurately tracking this multitude of taxes, and attributing the ta to individual subscribers, is impossible. Current billing and tracking software which is utilized by wireless carriers i unable to accurately track numerous taxes. Triton has already spent over $600,000 and anticipates spending another half million in the next six months to simply upgrade its billing systems to track these multiple taxes. Until this upg complete, Triton cannot accurately calculate the taxes attributable to individual subscribers and consequently, cannot pass these costs along to subscribers. Therefore, Triton must not only expend over $1 million to attempt to track the taxes, it must also wholly shoulder the full tax burden since it currently cannot pass the tax through to its subscribers Such costs for a start-up company are untenable and are effectively acting as a barrier to entering many towns and cities.

[5]Attached to these comments is Appendix A which details Virginia and other states' taxation requirements.

In addition to the financial burdens placed on providers, the administrative burden of determining which taxes apply to wireless carriers is virtually impossible. Many municipalities have not streamlined their tax collection policies and often impose dissimilar requirements on different entities. There is no central agency that knows about taxes which are applicable to wireless carriers. Individual municipalities are not even able to delineate for carriers al the taxes which the carrier must pay. Before providing service, new wireless carriers are therefore forced to blindly contact different municipal agencies in the hopes that the carrier has determined the complete list of taxes for which liable. In certain instances, carriers only learn after the relevant tax period that they are subject to certain additional taxes. Municipalities often provide conflicting information regarding the date that the taxes are due and the basis for carrier's tax liability. In several instances, municipalities have indicated that a tax is due and that Triton could just m check with a letter indicating what the amount is for - the municipality has no form to accompany the payment or process to follow. However, in some instances, if payment is not made, the municipality sends local law enforcemer the carrier's retail stores threatening to close them if payment is not made. Not only does such treatment further frustrate carriers' ability to meet their taxation responsibilities, it acts as a barrier to entry in violation of Section 253 the Act.

As previously stated, even if a carrier is able to determine all of the taxes for which it is liable, current bil technology is insufficient to adequately track all of these taxes. Carriers which provide service to an entire state or region may be responsible for tracking hundreds, or even thousands, of different taxes and tax rates. Current billing collection software is simply unable to adequately sort and maintain this information. Once again, carriers are force estimate tax payments, often paying excessive taxes. Carriers cannot expand their service areas, for fear of further burdening their strained billing software. Therefore, the Commission must step in to either require oversight and consolidation of these taxes or, in some instances, their elimination.

2. Many Tax Regulations on Telecommunications Providers Are Based on Wireline Services And Are Impossible to Calculate for Wireless Services.

In addition to the overall monetary burden placed on providers, many of these municipal taxes are based o the notion of wireline telecommunications services, with fixed origination and termination. This causes significant administrative problems for mobile wireless carriers which are unable to constantly monitor the locations of their cal to determine which portion of a call occurred in which jurisdiction. Triton urges the Commission to work with municipalities to develop new means for calculating mobile wireless services' revenue streams.

In most instances, state and municipal taxation is based on the carrier's gross revenue which is attributabl to that state or municipality. For wireline services, these revenues are easy to determine given that a carrier knows th origination and termination points for the call, as well as the location of the calling parties during the entire length of call. Consequently, wireline operators can easily determine the applicable gross revenues, using conventional billing collection software, which is the basis for the municipality's taxes.

Mobile wireless providers are at a significant, and insurmountable, disadvantage when calculating taxable revenue. By its very nature, mobile wireless service allows the subscriber to place calls in any location. In addition, caller may change its location throughout the duration of the call. In order to comply with some taxation schemes, mobile wireless carriers would have to constantly monitor each call, throughout the entire duration of the call, to determine which jurisdiction is entitled to which portion of these revenues. Billing and collection software which is currently in use in the industry simply cannot calculate this information for carriers. Consequently, carriers are force pick one of two equally displeasing options: under-report gross revenues and fear repercussions from the municipalit or overestimate revenues and pay in excess of their rightful share of taxes. Municipalities must revamp their taxation regulations to comport with the nature of wireless services. If these municipalities are unwilling to initiate this revis process themselves, the Commission must step in to ensure that wireless carriers receive fair treatment.

B. The FCC Should Not Permit Municipalities to Substitute Tax Collection for the Payment of Franchise Fees

1. Municipalities Should Not Be Allowed to Impose Franchise Fee Obligations on Wireless Providers Under the Disguise of "Taxes"

In the *NOI*, the Commission concluded that municipalities may reasonably regulate the use of their rights ways ("ROW") by telecommunications carriers, including the collection of franchise fees which are based on the cos the use of the rights-of-way. According to the Commission, excessive ROW regulation, and excessive franchise fees violate Section 253 of the Act in that they act as an impermissible barrier to entry. Although, as a wireless telecommunication provider, Triton does not utilize the public ROW and is therefore not subject to ROW regulations and fees, Triton wholeheartedly supports the Commission's efforts to limit unreasonable municipal ROW manageme and excessive franchise fees.

To effectively reduce franchise fees, however, the Commission must also limit the tax burden placed on a carriers. By reducing permissible franchise fee requirements, but allowing unlimited taxation, the Commission creat loophole for municipalities to maintain their revenue flow by simply renaming their franchise fee a "tax." By shiftin ROW revenue collection to taxation schemes, rather than fee collection for the service offered by the municipality, municipalities can still effectively impose excessive franchise fees. The Commission must therefore closely monitor municipal taxation schemes and pre-empt those schemes which truly are franchise fees.

Requiring wireless carriers, such as Triton, to pay disguised franchise fees in the form of a tax is even mo troubling. Wireless providers, by their nature, do not utilize the public ROW to connect their subscribers[6]. Consequently, wireless providers are excluded from ROW regulation and franchise fees. By requiring wireless carri to pay taxes that are in effect a franchise fee, the Commission would essentially invalidate the reasoning behind fran fees: namely, the payment of "rent" for the use of the public ROW. The Commission must therefore ensure that wireless carriers continue to be excluded from ROW obligations, including franchise fees that are disguised as a tax.

2. The South Carolina Business License Tax Exemplifies The "Disguised Franchise Fee" Tax

An example of the disguised franchise fee tax is evident in legislation recently enacted by the General

[6]*See also*, AT&T Communications of the Southwest, Inc. et. al. v. City of Dallas, *Memorandum Opinion and Order*, July 7, 1998.

Assembly of the State of South Carolina[7]. Triton is not opposed to paying a fair business license tax. However, und the South Carolina Business License Tax, a South Carolina municipality may impose a business license tax of three-tenths of one percent of the gross income derived from the sale of "retail telecommunications services," for the previ year, which either originated or terminated in the municipality and which were charged to a service address in the municipality, regardless of where these amounts are billed or paid. For mobile telecommunications services, gross revenues include only revenues from the monthly basic service charge of customers whose service address is within boundaries of the municipality. "Service address" is defined as either the billing address of the customer or the prim location of the customer's use of the mobile service. At the end of five years, the business license tax will be raised seventy-five hundredths of one percent of gross revenues and ***all existing franchise agreements will be phased out***. In addition, telecommunications carriers are required to pay the business license tax based on their previous year's gross revenues. For a business in operation less than one year, the amount of the business license tax must be computed based on a twelve-month projected income and must be paid before commencing operation.

The Business License Tax acts as a barrier to entry in violation of Section 253 of the Act and is a disguise franchise fee. First, the tax allows each municipality in which Triton operates to levy a business license tax on Trito This means that Triton may be required to track and pay hundreds of taxes, a feat which is beyond the capability of industry billing and collection software. In addition, because service address can refer to either the billing address o the location of the subscriber's primary use of their telecommunications service, Triton is forced to constantly monit where subscribers utilize their PCS service. Because of the mobile nature of this service, this "service area" can cha on a regular basis, creating a further administrative obstacle for carriers. Carriers are also potentially required to pay full year's business license tax assessment prior to beginning operations and developing a revenue stream, thereby creating a significant economic barrier to new entrants in the South Carolina telecommunications marketplace. Fina given that the business tax rate will rise simultaneous to the sunset of franchise fee assessments, the business license

[7]A copy of the South Carolina legislation is attached as Appendix B.

is clearly a means for municipalities to impose franchise-fee-like assessments on wireless providers in violation of Section 253 of the Telecommunications Act.

It is important to realize that Triton is not arguing that it should not be subject to the same types of busine license tax as all other businesses. However, telecommunications carriers should not pay higher rates than those of other businesses in South Carolina. In fact, while telecommunications carriers' taxes are based on gross revenues, other businesses in South Carolina are required to pay a nominal, flat fee. In addition, wireless carriers are being fur targeted because they will pay the same rate that telecommunications carriers who use ROWs pay even though wirel carriers do not use the ROWs. Telecommunications carriers should not be penalized for their choice of business no discriminated against due to their perception as revenue-rich entities[8]. Nor should wireless telecommunications carr foot the bill for ROWs which they do not use. This Commission must step in and lay some ground rules for the state and municipalities to follow before it gets further out of hand.

IV. CONCLUSION

Triton strives to be an exemplary corporate citizen in every locale in which it operates, and Triton is fully willing to pay its fair share of all taxes which serve to benefit these communities. However, Triton should not be required to pay excessive, discriminatory taxes and fees simply because it offers telecommunications services. Such oppressive taxation schemes inhibit competition, raise costs and serve as real barriers to entry into new markets. In addition, municipalities must be made to reform their taxation regulations to recognize the nature of wireless service and how revenue is collected for such services. Finally, municipalities must not be allowed to effectively impose franchise fees on wireless carriers who do not use ROWs. The Commission has an important role in policing state a municipal taxation policies and preempting those policies which are unreasonable and thwart competition. Triton respectfully requests the Commission to step up to the plate to ensure that wireless carriers are not unfairly

[8] *See*, Southern Bell Telephone & Telegraph Company v. City of Spartanburg, 285 S.C. 495, 331 S.E. 2d 333 (1985) (holding that Southern Bell received no additional public benefits and therefore should not be required to pay an excessive portion of the overall tax burden).

discriminated against.

Respectfully submitted,

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APPENDIX A

(SEE ATTACHMENT)

APPENDIX B

SOUTH CAROLINA 113TH SESSION OF THE SC GENERAL ASSEMBLY

HOUSE BILL NO. 3276

RATIFICATION NO. 191

1999 S.C. H.B. 3276; 1999 S.C. R. 191

SYNOPSIS: AN ACT TO AMEND CHAPTER 9 OF TITLE 58, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TELEPHONE, TELEGRAPH, AND EXPRESS COMPANIES, BY ADDING ARTICLE 20 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND CONDITIONS UNDER WHICH AMOUNTS MAY BE CHARGED BY MUNICIPALITIES TO TELECOMMUNICATIONS COMPANIES FOR THE USE OF
THE PUBLIC RIGHTS-OF-WAY AND FOR BUSINESS LICENSE TAXES IN ORDER TO ENSURE THAT SUCH CHARGES ARE IMPOSED ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS,
TO LIMIT OR RESTRICT THE IMPOSITION OF CERTAIN OTHER FEES AND TAXES ON TELECOMMUNICATIONS COMPANIES BY MUNICIPALITIES; TO PROVIDE A MAXIMUM RATE OF BUSINESS LICENSE TAX THAT MAY BE IMPOSED ON RETAIL TELECOMMUNICATION SERVICES BY
A MUNICIPALITY AFTER 2003 AND THE METHOD OF DETERMINING THAT MAXIMUM RATE; TO PROHIBIT A MUNICIPALITY FROM USING ITS AUTHORITY OVER THE PUBLIC STREETS AND PUBLIC PROPERTY AS A BASIS FOR ASSERTING OR EXERCISING CERTAIN REGULATORY CONTROL OVER TELECOMMUNICATIONS COMPANIES REGARDING MATTERS WITH THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION OR THE FEDERAL COMMUNICATIONS COMMISSION; TO ALLOW A COMMUNICATIONS COMPANY THAT IS OCCUPYING THE PUBLIC STREETS AND PUBLIC PROPERTY OF A MUNICIPALITY WITH ITS PERMISSION ON THE EFFECTIVE DATE OF THIS ARTICLE TO CONTINUE USING THE PUBLIC STREETS AND PUBLIC PROPERTY WITHOUT OBTAINING ADDITIONAL CONSENT; TO PROVIDE CONDITIONS UNDER WHICH
A MUNICIPALITY MAY ENFORCE AN ORDINANCE OR PRACTICE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE; TO AUTHORIZE A TELECOMMUNICATIONS COMPANY TO INCLUDE
A STATEMENT IN A MUNICIPAL CUSTOMER'S BILL THAT THE CUSTOMER'S MUNICIPALITY CHARGES A BUSINESS LICENSE TAX TO THE COMPANY; AND TO PROVIDE FOR RELATED PROCEDURAL AND OTHER MATTERS.

Whereas, Congress enacted the Telecommunications Act of 1996 to open local telephone markets to competition, and the telecommunications industry is in a state of transition; and

Whereas, in addition to new competitors in traditional local exchange telecommunications markets, a number of new technologies has developed and is developing at a rapid pace, expanding the array of telecommunications providers and services available to consumers; and

Whereas, since the passage of the Telecommunications Act of 1996, competition in telecommunications services and the number of competitors in the telecommunications industry in South Carolina has grown and continues to grow, as evidenced by the hundreds of new entrants into the industry. In South Carolina, over four hundred companies have been authorized to provide long distance service and over seventy companies have been authorized to provide local telephone service. South Carolina now has over one thousand authorized pay phone service providers and numerous digital and analog wireless and paging providers. Telephony may also now be provided over Internet protocol and cable modems; and

Whereas, the citizens of municipalities in South Carolina have long enjoyed the public benefit of dependable local exchange and long distance telecommunications service provided to them by telecommunications carriers that have constructed, operated, and maintained telecommunications facilities to serve those citizens, and that currently occupy the municipal rights-of-way in the State; and

Whereas, Congress has stated that nothing in Section 253 of the Telecommunications Act of 1996 affects the authority of the state or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is disclosed by such government. The General Assembly finds that shifting of current taxation and fees from a franchise fee basis to the basis outlined in the attached article is necessary and appropriate due to the transition of the telecommunications industry and is fair and reasonable, and taxes and fees exceeding such amount, except upon extraordinary circumstances, would be unreasonable. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Municipal charges to telecommunications providers

[*1] SECTION 1. Chapter 9 of Title 58 of the 1976 Code is amended by adding:

"Article 20

Municipal Charges to Telecommunications Providers

Section 58-9-2200. As used in this article:

(1) 'Telecommunications service' means the provision, transmission, conveyance, or routing for a consideration of voice, data, video, or any other information or signals of the purchaser's choosing to a point, or between or among points, specified by the purchaser, by or through any electronic, radio, or similar medium or method now in existence or hereafter devised. The term 'telecommunications service' includes, but is not limited to, local telephone

services, toll telephone services, telegraph services, teletypewriter services, teleconferencing services, private line services, channel services, Internet protocol telephony, and mobile telecommunications services and to the extent not already provided herein, those services described in Standard Industrial Classification (SIC) 481 and North American Industry Classification System (NAICS) 5133, except satellite services exempted by law.

(2) 'Retail telecommunications service' includes telecommunications services as defined in item (1) of this section but shall not include:

(a) telecommunications services which are used as a component part of a telecommunications service, are integrated into a telecommunications service, or are otherwise resold by another provider to the ultimate retail purchaser who originates or terminates the end-to-end communication including, but not limited to, the following:

(i) carrier access charges;

(ii) right of access charges;

(iii) interconnection charges paid by the providers of mobile telecommunications services or other telecommunications services;

(iv) charges paid by cable service providers for the transmission by another telecommunications provider of video or other programming;

(v) charges for the sale of unbundled network elements;

(vi) charges for the use of intercompany facilities; and

(vii) charges for services provided by shared, not-for-profit public safety radio systems approved by the FCC;

(b) information and data services including the storage of data or information for subsequent retrieval, the retrieval of data or information, or the processing, or reception and processing, of data or information intended to change its form or content;

(c) cable services that are subject to franchise fees defined and regulated under 47 U.S.C. Section 542;

(d) satellite television broadcast services.

(3) 'Telecommunications company' means a provider of one or more telecommunications services.

(4) 'Cable service' includes, but is not limited to, the provision of video programming or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video programming

or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other telecommunications service providers.

(5) 'Mobile telecommunications service' includes, but is not limited to, any one-way or two-way radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves, through cellular telecommunications services, personal communications services, paging services, specialized mobile radio services, and any other form of mobile one-way or two-way communications service.

(6) 'Service address' means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a retail customer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, and the like, 'service address' means the location of the retail customer's primary use of the telecommunications equipment or the billing address as provided by the customer to the service provider, provided that the billing address is within the licensed service area of the service provider.

(7) 'Bad debt' means any portion of a debt that is related to a sale of telecommunications services and which has become worthless or uncollectible, as determined under applicable federal income tax standards.

Section 58-9-2210. Nothing in this article shall limit a municipality's authority to enter into and charge for franchise agreements with respect to cable services as governed by 47 U.S.C. Section 542.

Section 58-9-2220. Notwithstanding any provision of law to the contrary:

(1) A business license tax levied by a municipality upon retail telecommunications services for the years 1999 through the year 2003 shall not exceed three-tenths of one percent of the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The business license tax levied by a municipality upon retail telecommunications services for the year 2004 and every year thereafter shall not exceed the business license tax rate as established in Section 58-9-2220(2). For a business in operation for less than one year, the amount of business license tax authorized by this section must be computed based on a twelve-month projected income.

(2)(a) The maximum business license tax that may be levied by a municipality on the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in

the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality for a business license tax year beginning after 2003 is the lesser of seventy-five one hundredths of one percent of gross income derived from the sale of retail telecommunication services or the maximum business license tax rate as calculated by the Board of Economic Advisors pursuant to subsection (b). For a business in operation for less than one year, the amount of business license tax authorized by this section must be computed based on a twelve-month projected income.

(b) The Board of Economic Advisors from the appropriate municipal records shall determine actual total municipal revenues from business license taxes, franchise fees, and other fees contractually imposed on the sale of telecommunications services and received from telecommunications companies in 1998, and actual total revenues received by municipalities in 1999, 2000, 2001, 2002, and 2003 from such taxes and fees imposed on the gross income derived from the sale of retail telecommunications services. The board shall determine an annual average growth rate applicable to such revenues by averaging the annual growth rates applicable to these revenues for 1999-2000, 2000-2001, 2001-2002, and 2002-2003 and shall apply that average growth rate to the 1998 actual revenues compounded annually to derive an estimated 2004 total revenue. The tax rate to be calculated by the board is the fraction produced by dividing the 2004 estimated revenue as determined above by gross income in 2003 derived from the sale of retail telecommunications services in municipalities in this State.

(c) If the maximum business license tax rate that may be levied by a municipality on retail telecommunications services, as determined by the Board of Economic Advisors, is calculated or determined to exceed seventy-five one hundredths of one percent of gross income derived from the sale of retail telecommunication services a joint telecommunications study committee shall review the maximum business license tax calculation, as determined by the Board of Economic Advisors, and verify the maximum business license tax calculation. Upon verification of the maximum business license tax calculation, the joint telecommunications study committee must sponsor a joint resolution to allow a municipality to levy the maximum business license tax rate greater than seventy-five one hundredths of one percent of gross income derived from the sale of retail telecommunications services.

(d) The joint telecommunications study committee shall consist of six members of the General Assembly: three Senators appointed by the President Pro Tempore of the Senate and three Representatives appointed by the Speaker of the House. The joint telecommunications study committee shall utilize the staff and resources of the Labor, Commerce and Industry Committee of the House of Representatives and the Judiciary Committee of the Senate. The joint telecommunications study committee is authorized to verify the maximum business license tax rate determined by the Board of Economic Advisors.

(3) A business license tax levied by a municipality upon the retail telecommunications services provided by a telecommunications company must be levied in a competitively neutral and nondiscriminatory manner upon all providers of retail telecommunications services.

(4) The measurement of the amounts derived from the retail sale of telecommunications services does not include:

(a) an excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local government including, but not limited to, emergency telephone surcharges, upon the purchase, sale, use, or consumption of a telecommunications service, which is permitted or required to be added to the purchase price of the service; and

(b) bad debts.

(5) A business license tax levied by a municipality upon a telecommunications company must be reported and remitted on an annual basis. The municipality may inspect the records of the telecommunications company as they relate to payments under this article.

(6) The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality.

Section 58-9-2230. (A) A municipality must manage its public rights-of-way on a competitively neutral and nondiscriminatory basis and may impose a fair and reasonable franchise or consent fee on a telecommunications company for use of the public streets and public property to provide telecommunications service unless the telecommunications company has an existing contractual, constitutional, statutory, or other right to construct or operate in the public streets and public property including, but not limited to, consent previously granted by a municipality. Any such fair and reasonable franchise or consent fee which may be imposed upon a telecommunications company shall not exceed the annual sum as set forth in the following schedule based on population:

Tier I - 1 - 1,000 - $ 100.00

Tier II - 1,001 - 3,000 - $ 200.00

Tier III - 3,001 - 5,000 - $ 300.00

Tier IV - 5,001 - 10,000 - $ 500.00

Tier V - 10,001 - 25,000 - $ 750.00

Tier VI - Over 25,000 - $ 1,000.00

(B) A municipality must manage its public rights-of-way on a competitively neutral and nondiscriminatory basis and may impose an administrative fee upon a telecommunications company which is not subject to subsection (A) in this section that constructs or installs or has previously constructed or installed facilities in the public streets and public property to provide telecommunications service. Any such fee which may be imposed on a telecommunications company shall not exceed the annual sum as set forth in the following schedule based on population:

Tier I - 1 - 1,000 - $ 100.00

Tier II - 1,001 - 3,000 - $ 200.00

Tier III - 3,001 - 5,000 - $ 300.00

Tier IV - 5,001 - 10,000 - $ 500.00

Tier V - 10,001 - 25,000 - $ 750.00

Tier VI - Over 25,000 - $ 1,000.00

(C) No municipality shall levy any tax, license, fee, or other assessment on, with respect to, or measured by the receipts from any telecommunications service, other than (a) the business license tax authorized by this article, and (b) franchise fees as defined and regulated under 47 U.S.C. Section 542; provided, however, that nothing herein shall restrict the right of any municipality to impose ad valorem taxes, service fees, sales taxes, or other taxes and fees lawfully imposed on other businesses within the municipalities.

(D) A telecommunications company, including a mobile telecommunications company providing mobile telecommunications services, shall not be deemed to be using public streets or public property unless it has constructed or installed physical facilities in public streets or on public property, provided that the use of public streets or public property under lease, site license, or other similar contractual arrangement between a municipality and a telecommunications company shall not constitute the use of public streets or public property under this article. Without limiting the generality of the foregoing, a telecommunications company shall not be deemed to be using public streets or public property under this article solely because of its use of airwaves within a municipality. Should any telecommunications company, including a telecommunications company providing mobile telecommunications services, request of a municipality permission to construct or install physical facilities in public streets or on public property, such request shall be considered by such municipality in a manner that is competitively neutral and nondiscriminatory as amongst all telecommunications companies.

Section 58-9-2240. A municipality may not use its authority over the public streets and public property as a basis for asserting or exercising regulatory

control over telecommunications companies regarding matters within the jurisdiction of the Public Service Commission or the Federal Communications Commission including, but not limited to, the operations, systems, service quality, service territory, and prices of a telecommunications company. Nothing in this section shall be construed to limit the authority of a local governmental entity over a cable television company providing cable service as permitted by 47 U.S.C. Section 542.

Section 58-9-2250. A telecommunications company, its successors or assigns, that is occupying the public streets and public property of a municipality on the effective date of this article with the consent of the municipality to use such public streets and public property shall not be required to obtain additional consent to continue the occupation of those public streets and public property.

Section 58-9-2260. (A) No municipality may enforce an ordinance or practice which is inconsistent or in conflict with the provisions of this article, except that:

(1) As of the time of the effective date of this article, any municipality which had entered into a franchise agreement or other contractual agreement with a telecommunications provider prior to December 31, 1997, may continue to collect fees under the franchise agreement or other contractual agreement through December 31, 2003, regardless of whether the franchise agreement or contractual agreement expires prior to December 31, 2003.

(2) Nothing in this article shall be interpreted to interfere with continuing obligations of any franchise or other contractual agreement in the event that the franchise agreement or other contractual agreement should expire after December 31, 2003.

(3) In the event that a municipality collects these fees under a franchise agreement or other contractual agreement herein, the fees shall be in lieu of fees or taxes that might otherwise be authorized by this article.

(4) Any municipality that, as of the effective date of this article, has in effect a business license tax ordinance, adopted prior to December 31, 1997, under which the municipality has been imposing and a telecommunications company has been paying a business license tax higher than that permitted under this article but less than five percent may continue to collect the tax under the ordinance through December 31, 2003, instead of the business license tax permitted under this article.

(5) Any municipality which, by ordinance adopted prior to December 31, 1997, has imposed a business license tax and/or franchise fee on telecommunications companies of five percent or higher of gross income derived from the sale of telecommunications services in the municipality, to which tax and/or fee a

telecommunications company has objected, failed to accept, filed suit to oppose, failed to pay any license taxes or franchise fees required thereunder, or paid license taxes or franchise fees under protest, may enforce the ordinance and the ordinance shall continue in full force and effect until December 31, 2003, unless a court of competent jurisdiction declares the ordinance unlawful or invalid. In this event, the municipality is authorized until December 31, 2003, to collect business license taxes and/or franchise fees thereunder, not exceeding three percent of gross income derived from the sale of telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality instead of the business license tax permitted under this article; however, this proviso applies to any business license ordinance and/or telecommunications franchise ordinance notwithstanding that same is amended or has been amended subsequent to December 31, 1997.

(B) The exception to this article described in subsection (A)(5) no longer applies after December 31, 2003.

Section 58-9-2270. A telecommunications company may include the following statement or substantially similar language in any municipal customer's bill when that customer's municipality charges a business license tax to the telecommunications company under this chapter: 'Please note that included in this bill there may be a line-item charge for a business license tax assessed by your municipality'."

Severability clause

[*2] SECTION 2. If a section, paragraph, provision, or portion of this article is held to be unconstitutional or invalid by a court of competent jurisdiction, this holding shall not affect the constitutionality or validity of the remaining portions of this article, and the General Assembly for this purpose hereby declares that the provisions of this article are severable from each other.

Time effective

[*3] SECTION 3. This act takes effect upon approval by the Governor.

HISTORY:
Approved by the Governor June 30, 1999

SPONSOR: Wilkins